IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7212 OF 2004

WITH

WRIT PETITION NO. 7213 OF 2004

Someshwar Sahakari Sakhar Karkhana Ltd. .. Petitioner

V/s

General Secretary,
Baramati Taluka Sahakar Kamgar Sabha and Anr. .. Respondents

Mr.K.S. Bapat for the petitioner.

Mr.P.M. Patel for the respondent No.1.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 6TH OCTOBER 2004

P.C. :

1. Since common questions of law and facts arise in both these petitions, they are being disposed of by a common order.

2. Heard the learned advocates for the parties.

3. Rule.

4. By consent, rule is made returnable forthwith.

5. The petitioner challenges the order passed by the Industrial Court, Pune rejecting the application for amendment of the written statement of the petitioner.

The application has been rejected on the ground that recording evidence of the respondent No.1 has already been concluded and the proposed amendment relates to the facts which have occurred subsequent to the filing of the complaint, besides that the proposed amendment would change the nature of the complaint and, therefore, would cause prejudice to the complainant.

6. Upon hearing the learned advocates for the petitioner and the respondent No.1 and on perusal of record, undisputedly the application for amendment was in relation to the written statement filed by the petitioner and not in relation to the complaint. Therefore, one fails to understand how the proposed amendment can change the nature of the complaint when the amendment does not relate to the complaint but to the written statement.

7. Undisputedly, the proposed amendment relates to the facts which are alleged to have occurred subsequent to the filing of the complaint and in relation to the point of law sought to be introduced as regards the non-maintainability of the complaint. Merely because recording evidence of the complainant has been concluded, that by itself cannot be a justification to

refuse the amendment to the written statement. Once the petitioner - opponent in the complaint is allowed to amend the written statement, certainly the respondent No.1 herein, who is the complainant in the Industrial Court, can be allowed to lead further evidence in relation to the pleadings introduced by way of amendment in the written statement. Being so, even though the amendment is allowed at a belated stage, it cannot result in any prejudice as such to the respondent-complainant.

8. Once it is apparent that the facts which are sought to be introduced in the pleadings have occurred subsequent to the filing of the complaint, certainly the petitioner cannot be blamed for approaching the court at late stage with the application for amendment as, by no stretch of imagination, it can be presumed that the petitioner would have visualised what would happen subsequent to the filing of the written statement. Very fact that the pleadings proposed to be introduced by way of amendment relate to the facts which have occurred subsequent to the filing of the written statement discloses that the same could not have been stated or pleaded at a time when the written statement was filed.

9. In any case, the impugned order does not appear to have been passed with proper application of mind to the matter in dispute as well as bearing in mind the settled principles of law in relation to the rights of the parties to amend the pleadings in the course of the trial. Considering the same, the impugned order cannot be sustained and is liable to be set aside and the petitioner could be allowed to amend the written statement as prayed for under the application, a copy of which is annexed to the petition as Exhibit-A at page 10. Subject however to that, the respondent No.1 shall be entitled to lead further evidence if they so desire and the petitioner shall pay costs of Rs.1000/- to the respondent in each of the petitions. Payment of costs shall be condition precedent to enable the petitioner to amend the written statement.

10. Rule is made absolute accordingly with no further order as to costs. Amendment to be carried out within 2 weeks from the date of receipt of the writ of this court by the Industrial Court.

(R.M.S. KHANDEPARKAR J.)